

the surgical instrument along one passage after cutting the body wall.

27. The trocar sleeve defined in claim 26 wherein the pivotable parts bear against an inner side of the body wall in the operative position.

28. The trocar sleeve defined in claim 24 wherein each of the pivotable parts is configured as a wing.

29. The trocar sleeve defined in claim 25 wherein each of the spring elements acts upon a respective individual pivotable part.

30. The trocar sleeve defined in claim 24 wherein the distal section has a flange bearing against an outer side of the body wall.

31. The trocar sleeve defined in claim 30 wherein the flange is displaceable along the distal section of the elongate part.

**Remarks**

Applicant solicits the entry of this amendment after the Final Office Action since the number of claims has been drastically reduced, the amended claims have been placed in condition for allowance, and/or the claims have been put in better form for consideration on appeal. Applicant believes that the outstanding prior art rejection is based on miscommunication concerning scope of the word "pierce" with the Examiner having interpreted it as "to insert through a hole" and with applicant having interpreted and intended it as "to cut a hole for insertion". Applicant's amendment to the claims lays this miscommunication to rest and clearly avoids the cited art.

The informalities noted by the Examiner and serving as a basis for the examiner's objection to the disclosure have been eliminated.

Claims 9-24 have been rejected under 35 U.S.C. §112, second paragraph.

Claim 24 has been amended to recite a structure of a trocar sleeve in sharper terms. Particularly, pivotable parts have been recited to have blade end portions described on p. 3, line 21 of the specification. No issue of new matter is raised.

Claims 9-23 have been withdrawn from further consideration without prejudice and replaced with new claims 25-31 reciting structures claimed in the withdrawn claims 16, 12, 13, and 20-22, respectively.

The invention is a combination of individual pivotable parts, each having a blade end portion. The blade end portions form a pointed tip that allows a trocar sleeve to cut a body wall. A blade is defined as a "cutting part" (Webster's New Universal Unabridged Dictionary (1993)). As a consequence, the pointed tip formed by the blade end portions is capable of cutting the body wall without use of any additional piercing instruments after pivotable parts have been biased toward one another in a piecing position.

Claims 9-24 have been rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,279,564 to Taylor. Taylor, however, does not have blade end portions which form a pointed tip capable of cutting a body wall, as required by the independent claim 24 of this application. Taylor is directed to a cannula retention device designed for use only after the body wall has been pierced.

U.S. patent 5,354,302 to Ko that shows a distal end of the sleeve having pivotable wedge portions 22a-22c, however, Ko specifically teaches a plurality of resilient

wedge portions that form substantially "a blunt penetration end 18 (or tissue distending mechanism) that may be inserted through an opening in a body." (See column 5, lines 35-43) Further in column 8, lines 37-40, Ko discloses that "an incision is made into the skin sufficient to allow the outer sleeve 12 to be inserted through the opening caused by the incision." Thus, Ko teaches cutting or piercing the skin with a cutting instrument before a distal end of the device claimed therein may be introduced. In contrast, this invention discloses the blade end portions forming a tip that cuts the body wall without any additional instrument, as required by claim 24.

Therefore, all of the claims should be allowable and an early notice to that effect is earnestly solicited.

Respectfully submitted,



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